

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)
425 Third Street SW, Suite 800)
Washington, DC 20024,)
)
Plaintiff,)
) Civil Action No.
v.)
)
U.S. DEPARTMENT OF JUSTICE,)
950 Pennsylvania Avenue NW)
Washington, DC 20530-0001,)
)
Defendant.)
_____)

COMPLAINT

Plaintiff Judicial Watch, Inc. (“Plaintiff”) brings this action against the U.S. Department of Justice (“Defendant” or “DOJ”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552. As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Judicial Watch, Inc. is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As part of its mission, Plaintiff regularly requests records from federal agencies pursuant to the Freedom of Information Act

(“FOIA”). Plaintiff analyzes the responses and disseminates its findings and the requested records to the American public to inform them about “what their government is up to.”

4. Defendant is an agency of the United States Government. Defendant has possession, custody, and control of records to which Plaintiff seeks access. Defendant is headquartered at 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001.

STATEMENT OF FACTS

5. On July 11, 2019, Plaintiff submitted identical FOIA requests to the Federal Bureau of Investigation (“FBI”), a component of Defendant, and DOJ’s FOIA/PA Mail Referral Unit. The requests sought access to a single record – the Electronic Communication that initiated the counterintelligence investigation of President Trump’s 2016 presidential campaign. Included with the requests was an April 2018 letter from the House Permanent Select Committee on Intelligence concerning a congressional subpoena for the same record.

6. According to U.S. Postal Service records, the FBI received the request on July 15, 2019, and DOJ’s FOIA/PA Mail Referral Unit received the request on July 18, 2019.

7. The FBI acknowledged receipt of the request by letter dated July 24, 2018. It assigned the request FOIPA Request No. 1442326-000. DOJ has not acknowledged receipt of the request.

8. As of the date of this Complaint, neither the FBI nor DOJ has: (i) produced the requested record or demonstrated that the record is lawfully exempt from production; (ii) notified Plaintiff whether they intend to produce or withhold the requested record in full or in part and the reasons for any withholdings; or (iii) informed Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I
(Violation of FOIA, 5 U.S.C. § 552)

9. Plaintiff realleges paragraphs 1 through 8 as if fully stated herein.
10. Defendant is in violation of FOIA.
11. Plaintiff is being irreparably harmed by Defendant's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the law.
12. Plaintiff has no adequate remedy at law.
13. To trigger FOIA's administrative exhaustion requirement, Defendant was required to make final determinations on Plaintiff's requests within the time limits set by FOIA. Using the July 18, 2019 date of receipt by DOJ's FOIA/PA Mail Referral Unit as the starting point for calculating the response period, Defendant's determinations were due by August 29, 2019 at the latest.
14. Because Defendant failed to make final determinations on Plaintiff's requests within the time limits set by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to search for the requested record and demonstrate that it employed search methods reasonably likely to locate the record; (2) order Defendant to produce all non-exempt portions of the record by a date certain and provide a *Vaughn* index of any portions of the record withheld under a claim of exemption; (3) enjoin Defendant from continuing to withhold non-exempt portions of the record; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: September 13, 2019

Respectfully submitted,

/s/ Paul J. Orfanelles
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